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SUPREME COURT OF THE UNITED STATES.

[redacted]

No. 185.

PATRICK SUTTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEW JERSEY.

[redacted]

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UPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 189.

PATRICK SUTTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF NEW JERSEY.

ROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY.

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a New Jersey Court of Errors and Appeals.

2592.

STATE OF NEW JERSEY, Defendant-in-Certiorari, Defendant-in-Error,
vs.
PATRICK SUTTON, Prosecutor, Plaintiff-in-Error.

In Error.

State of Case.

Thomas G. Haight, Attorney for Defendant-in-Certiorari, Defendant-in-Error.
Edwards & Smith, Attorneys for Prosecutor, Plaintiff-in-Error.

1 *Writ of Error.*

(Filed March 3, 1913.)

NEW JERSEY, *ss:*

[SEAL.]

The State of New Jersey to the Chief Justice and Other Justices of Our Supreme Court of Judicature, Greeting:

Forasmuch as in the record and proceedings and also in the giving of judgment in a certain plaint which was in our said Supreme Court of Judicature, before you, between Patrick Sutton, Prosecutor and State of New Jersey, defendant in an action on certiorari manifest error hath intervened to the great damage of the said prosecutor, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment *by* thereupon given, and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, the fourth day of March, instant, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting the error, what of right and according to the law and custom of the State of New Jersey, ought to be done.

Witness, our Chancellor and President Judge of our said
2 Court of Errors and Appeals, Trenton, aforesaid, the 26th day of February, nineteen hundred and thirteen.

DAVID S. CRATER, *Clerk.*

EDWARDS & SMITH,
Attorneys of Prosecutor, Plaintiff-in-Error.

Return.

(Filed March 3, 1912.)

The answer of the Justices of the Supreme Court of the State of New Jersey within named.—The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

[SEAL.] WM. S. GUMMERE, *C. J.*

3 *Writ of Certiorari.*

(Filed May 4, 1912.)

STATE OF NEW JERSEY:

[SEAL.]

State of New Jersey to James Butler, Judge of the First Criminal Court of Jersey City, Greeting:

We being willing for certain reasons to be certified of and concerning a certain accusation in writing, plea, trial and judgment of conviction and order lately made, pleaded and had before and by you against Patrick Sutton, on the complaint of James Coyle, Lieutenant of Police of Jersey City, for assault and battery as is said, do command you that the said accusation in writing, plea, trial, judgment of conviction and order aforesaid, with all things touching and concerning the same, together with this writ, by whatever name the defendant aforesaid may be called in the said proceedings, you do distinctly and openly send under your hand and seal to our Justices of our Supreme Court of Judicature at Trenton on the fourth day of May, next, that our Justices may cause to be done thereupon what of right and according to the laws of this State should be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton this 29th day of April, Nineteen hundred and twelve.

WM. RIKER, JR., *Clerk.*

EDWARDS & SMITH,
Attorneys.

4 *Affidavit for Writ.*

(Filed May 4, 1912.)

STATE OF NEW JERSEY,
County of Hudson, ss:

Patrick Sutton, of Jersey City, in the County of Hudson and State of New Jersey, of full age, being duly sworn, on his oath de-

poses and says, that he is employed by the Public Service Railway Company as an inspector upon its electric street railway line in Jersey City aforesaid. That on the twentieth day of April, Nineteen hundred and twelve, he was arrested upon a charge of assault and battery upon the complaint of James Coyle, a Lieutenant of Police of Jersey City, and upon the 23rd day of April arraigned, tried, convicted and sentenced upon the said charge before James Butler, Judge of the First Criminal Court of Jersey City. That said arrest was made by the complainant, James Coyle in consequence of the ejection of the said Coyle from one of the cars of the Public Service Railway Company at the request of the conductor of the said car addressed to deponent, for refusing to pay the regular fare demanded and received by the Public Service Railway Company for transportation upon its cars. That in so assisting in the ejection of the complainant Coyle, deponent was acting under the orders of his employer, the Public Service Railway Company. That the complainant Coyle set up on the trial in justification of his refusal to pay fare an act entitled "A Supplement to an Act entitled 'An Act concerning public utilities, to create a Board of Public Utility Commissioners and to prescribe its duties and powers', approved April twenty-first, nineteen hundred and eleven", which said supplement was approved by the Legislature on March 26, 1912, and is known as Chapter 159 of the Laws of 1912. That deponent is advised and believes that the said act is unconstitutional and void as depriving the said Public Service Railway Company of its property without due process of law; that upon the trial before Judge Butler in the First Criminal Court of Jersey City said judge refused to declare said act unconstitutional and found deponent guilty of assault and battery; that there was no contention that deponent used more force than was necessary to eject said Coyle. That this affidavit is made for the purpose of procuring a writ of certiorari to review the action of said Court in rendering judgment against deponent.

PATRICK SUTTON.

Sworn and subscribed to before me this 25th day of April, A. D. 1912.

WILLIAM G. McLOUGHLIN,
Notary Public of New Jersey.

Return.

To the Honorable Chief Justice and Associate Justices of the Supreme Court:

The accusation, plea, trial, judgment and order, whereof mention is within made, I do hereby certify and send under the seal of this Court in the schedule hereto annexed, as within I am commanded.

[SEAL.] JAMES A. BUTLER,
Judge of the First Criminal Court of Jersey City.

6 SCHEDULE.

First Criminal Court of Jersey City.

Before James Butler, Judge.

STATE OF NEW JERSEY
vs.
PATRICK SUTTON.

On Certiorari.

SCHEDULE.

1912.
April 20. Defendant Patrick Sutton summarily arrested by James Coyle, brought before me.
" 20. Complaint of assault and battery made by James Coyle. See copy annexed.
" 20. Defendant paroled in care of counsel.
" 23. Defendant appeared by counsel, William D. Edwards, and waived indictment by Grand Jury. Pleaded not guilty and asked for trial before Court.
" 23. Defendant tried. See stenographic notes of trial annexed. James Coyle, Daniel Lee and Patrick Sutton, witnesses.
" 23. Defendant found guilty of assault and battery.
" 23. Defendant sentenced to pay fine of five dollars.
" 23. Defendant paroled in care of counsel pending appeal on certiorari.

Dated, April 30, 1912.
[SEAL.] JAMES A. BUTLER, *Judge.*

7 *Complaint.*

First Criminal Court of Jersey City.

STATE OF NEW JERSEY
vs.
PATRICK SUTTON.

Complaint, for Assault and Battery.

CITY OF JERSEY CITY,
County of Hudson,
State of New Jersey, ss:

James Coyle, Lieutenant of Police of Jersey City, being duly sworn, complains that on the 20th day of April, A. D., one thousand nine hundred and twelve, at 8:15 o'clock A. M., or thereabouts at West

Side and Jewitt Ave., in Jersey City aforesaid, Patrick Sutton, of 33 Orchard St., J. C., with force and arms did assault the said Complainant in the peace of the State then and there being and did then and there assault, beat and ill treat the said complainant against the peace of the State.

Wherefore, this complainant prays that the said offender may be dealt with according to the law.

JAMES COYLE, *Complainant.*

Subscribed and sworn to before me this 23rd day of April, 1912.

[L. S.] EDWARD MARKLEY,
Clerk 1st Criminal Court, Jersey City.

8 *Certificate.*

I, James Butler, Judge of the First Criminal Court of Jersey City, do hereby certify that the testimony annexed to this schedule is a true transcript and copy of the testimony taken before me upon the twenty-third day of April, Nineteen hundred and twelve, in the case of the State upon the complaint of James Coyle against Patrick Sutton, and the exhibits offered in evidence, on which day the respective parties appeared before me by their counsel, and the said complaint was tried and defendant found guilty and sentenced.

[SEAL.] JAMES A. BUTLER, *Judge.*

9 *Testimony.*

First Criminal Court of Jersey City.

Hon. James Butler, Judge.

THE STATE
vs.
PATRICK SUTTON.

Assault and Battery.

Trial of the above cause April 23, 1912.

Appearances:

Mr. Thomas G. Haight, for the State.
Mr. W. D. Edwards, for the Defendant.

The complaint is read and the defendant waives indictment or appearance before the Grand Jury, and agrees to be tried before this court.

A waiver is signed.

JAMES COYLE, a witness produced on behalf of the State, being sworn, testified as follows:

Direct examination by Mr. Haight:

Q. You are a member of the police force of Jersey City?
A. Yes.
Q. In what capacity?
A. Lieutenant, plain clothes lieutenant.
Q. Lieutenant of detectives?
A. Of detectives.
Q. Were you such on the twentieth of April last?
A. Yes.
Q. How long have you been on the police force?
A. Thirteen years.
Q. How long have you been a detective?
A. About three years.
Q. Where were you stationed?
A. Police headquarters.
Q. Where is that?
A. City Hall, Grove and Mercer Streets.
Q. Where do you reside?
A. 98 Lexington Avenue, Jersey City.
Q. How far is that from the city hall?
A. About a mile and a half.
Q. Have you any particular hours of service?
A. No, sir.
Q. Are you on duty at all times?
A. At all times, yes.
Q. Are you compelled to report at the city hall every morning?
A. No, sir.
Q. Are you compelled to report in any way to the city hall station when you arise in the morning?
A. Well, if I have a case, I go down there and tell them I am going out on the case, and from there I go to the case.
Q. In other words, you notify them every morning what you are going to do?
A. Yes.
Q. You don't have to report there personally, you do it either the night before or by telephone in the morning?
A. Yes.
Q. You have to report unless you have told them the night before what you are going to do? You have to report some way?
A. Yes.
Q. You have no fixed time of leaving home? It depends on your work?
A. Yes.
Q. Are you required to report at the city hall in person in any case?
A. No.
Q. On the morning of April 20th last, were you required to report at the city hall station after leaving your home?

A. On the twentieth, yes.

Q. Did you board a car of the Public Service Railway Company for the purpose of going to the city hall station?

A. Yes.

Q. —to report, in accordance with your duties?

A. Yes.

Q. Where did you board the car?

A. Lexington Avenue and west Side Avenue.

Q. Is that near your home?

A. Yes.

Q. What happened after you got on that car?

A. I pulled out my badge and told him my name was Coyle, lieutenant of police. He says, "You got to pay your fare"; I says, "No."

Q. Who did?

A. The conductor. He says, "No, you have got to pay your fare"; so I walked in and didn't pay any more attention, until we got to about Jewett Avenue and West Side Avenue, and he called Mr. Sutton, here——

Q. The defendant?

A. Yes. He come in and asked me whether I was going to pay my fare. I told him no.

Q. Did you tell him why?

A. Yes, sure; I was Detective Coyle, of the police headquarters.

Q. Did you show him your badge?

A. No.

Q. Did he ask to see it?

A. He knew me as a detective.

Mr. Edwards: It is admitted that Mr. Sutton knew that this gentleman was a detective.

Q. What happened then?

A. He put me off the car. When he had me put off the
12 car I placed him under arrest.

Cross-examination by Mr. Edwards:

Q. Suppose, on your way down, you had had your attention called to a violation of the law, a violation of the city ordinances or any portion of the crimes act, you would have acted before you got to the city hall?

A. Yes.

Q. It would have been your duty to act?

A. Yes, at all times.

Q. Then you are not like a patrolman, who is only expected to act when he is on duty?

A. No.

Q. Mr. Sutton did not use any more force than was necessary to put you off?

A. No.

Redirect examination by Mr. Haight:

Q. Do you go on the cars at all to locate pickpockets from time to time?

Mr. Edwards: I will agree that the testimony of Mr. Lee in the other case may be used in this case.

Mr. Haight: I want to add a little bit to it. Let it stand, but I want to add a little bit to it.

A. At the Bergen celebration I got three of the cleverest pickpockets in the country on the West Side car line. Last summer at the Circus on Central Avenue I got three men on the Summit Avenue line. They had a world-wide reputation. They all know them.

Q. You frequently have to go on the cars in the performance of your duty, to locate people on the cars?

A. Yes.

13 Q. You followed these men——

A. Over to the circus.

Recross-examination by Mr. Edwards:

Q. You were not after any pickpockets—this particular morning, you were not on the car to arrest any pickpockets?

A. No.

DANIEL LEE, a witness produced on behalf of the State, being sworn, testified as follows:

Mr. Edwards: The Captain's testimony in the other case may be used in this case.

Direct examination by Mr. Haight:

Q. You are the head of the detective force of Jersey City?

A. Yes.

Q. You were such on the 20th of April last?

A. Yes.

Q. Do you know Lieutenant Coyle, who was the last witness on the stand?

A. Yes.

Q. Is he connected with the police force of Jersey City?

A. Yes.

Q. In what capacity?

A. Plain clothes lieutenant.

Q. His duties as detective lieutenant require him to do duty without uniform?

A. Yes, they do.

Q. Is it the custom of the police department to have plain clothes detectives from time to time on the trolley cars?

A. Yes.

Q. State the reasons you have them there?

A. We have them there at all times going back and forth.

Q. Do you have them there for any specific purpose?
14 A. Yes, to see if there are any pickpockets on the car——
Q. Any other reasons?
A. And any other trouble that may arise while they are on the car. If they see a violation of the law they will make an arrest.
Q. Do you have them circulating on the cars at all times?
A. We do, on all the different lines in the city.
Q. For the purpose of detecting pickpockets and preserving the laws?
A. Yes.
Q. How long have you been a member of the police force of Jersey City?
A. Twenty-four years.
Q. To your knowledge have the police, or have they not, been carried free by the trolley companies operating in Jersey City during that period?
A. I can't say twenty-four years, I can go back sixteen years.
Q. What do you mean that you can't go back further,—your recollection?
A. I was not lieutenant then, at least I was not a detective.
Q. Can't you recall whether you were carried then or not?
A. I could testify that for over twenty odd years they have not paid fares. I never knew them to pay fares,—detectives.
Q. When was the rule put into effect, they were to pay fares?
A. July, 1910, under the Utility Law.

(It is stipulated by Counsel that on July 4, 1910, the first public utilities law went into effect purporting to bar the issuance of passes, that after that time no tickets were issued to the detectives
15 by the company, which entitled them to free rides.)

Q. How many detectives have you?
A. Twenty-three.
Q. Do you know whether the Public Service Railway Company is now carrying the uniformed police while in uniform, free of charge?

Mr. Edwards: I object on the ground that it is immaterial.
Mr. Haight: It may become very material on the question of construing the law.
The Court: I will allow the question.

A. Yes.

Cross-examination by Mr. Edwards:

Q. Prior to July, 1910, the detectives were furnished with books?
A. Yes, pass books.
Q. As each trip was taken——
A. They tore off a ticket.

Redirect examination by Mr. Haight:

Q. Did you give the detectives orders before or on the 19th of April to refuse to pay fares?

A. The Chief of Police did.
Q. Are your detectives ever off duty?
A. No, sir.
Q. Are they required to do police duty at all times?
A. At all times.
Q. Subject to orders?
A. —and call at any time, night or day.
Q. Are they required by the rules to arrest anyone, or to follow up any crime they may see without orders?
A. That is their duty.

16 Recross-examination by Mr. Edwards:

Q. How do you call them, any hour day or night?
A. They all have telephones.
Q. The city pays for them?
A. No, sir; they pay for their own telephones.
Q. Are they expected to answer at all times?
A. Yes.
Q. Do you call them at night?
A. Yes, very often.
Q. They have to sleep with their badges on?
A. (No answer.)

Mr. Edwards: We offer in evidence the certificate of the incorporation of the Public Service Railway Company, dated August 20, 1907, under which certificate, on the 20th day of August, 1907, the Public Service Railway Company entered into the possession and operation of street railway lines in Jersey City, which street railway lines had been operated by other companies for many years previous thereto.

Mr. Edwards: We have no testimony to offer. We ask for the discharge of the defendant on the ground that the detective had no right to ride on the car without paying his fare. It is admitted that he was in the performance of police duty, but notwithstanding, he was not entitled to ride. The complainant says that he was entitled to ride under the provisions of Chapter 159 of the laws of 1912, but we insist that that law is unconstitutional, on the ground that it deprives the Railway Company of its Property without due process of law. While we do not intend to make any extended argument on the subject we would call your attention to the case of Wilson vs. United Traction Company, 3 Appellate Division of the State of New York, as it is reported in 76 N. Y. Supp. Reports, 203; 72 Appellate Division, 233. Of course we know it is rather an extraordinary thing to ask a police justice to pass upon the constitutionality of the law, but we make the point, and if your Honor refuses to recognize the point it will be our duty to carry the matter up.

17

The Court: I would feel that I had no right to question the law, nor to follow that decision. I have got to take judicial notice of the laws passed by the last Legislature which gives to the complainant in this case the privilege of riding free on the cars of the

company while engaged in the performance of his duty. It appears that while so attempting to ride on this car the defendant, one of the men of the Public Service Railway Company, used force upon the body of the complainant to put him off the car. I find the defendant guilty of assault and battery and I will fine him five dollars.

Mr. Edwards: We intend to carry the case up.

18 *Decision of Justice Swayze.*

New Jersey Supreme Court.

STATE OF NEW JERSEY
vs.
PATRICK SUTTON, Prosecutor.

Before Swayze, J.

Pursuant to the statute.
Certiorari of conviction before a magistrate.
William D. Edwards (Edwards & Smith) for the prosecutor.
Thomas G. Haight (Warren Dixon on the brief) for the State.

SWAYZE, *J.*:

The prosecutor was convicted of assault and battery upon a detective, a member of the police force of Jersey City, and justified upon the ground that the detective was lawfully ejected by the prosecutor acting as servant of the Public Service Railway Company for refusal to pay fare. This defense was met by the act of 1912 (P. L. 235) requiring street railways to grant free transportation of uniformed public officers while engaged in the performance of their public duties and of detectives whose duties require police duty to be performed without uniform. No question is made that the detective was a public officer and came within the provisions of the act. Its constitutional validity is questioned because it is said to take the railway company's property without compen-
19 sation. No other point was argued. Wilson vs. United Traction Co., 76 N. Y. Supp. 203, is a clear authority in favor of this contention. The State relies upon the decision of the Supreme Court of the United States in Interstate Consolidated Street Railway Company vs. Massachusetts, 207 U. S., 79. That case, however, involved the question of the right to require the transportation of school children at less than cost,—half fare,—and not the question of the right to require free transportation. The act now in question requires the free transportation of all public officers in uniform. It is not limited to members of the *public* force. But as the present case involves only the class that named, and so far as appears no other class of public officers will ever claim its privileges to the injury of the company, consideration of the constitutionality of the act ought to be limited to the

exact case presented. Tyler vs. Judges of the Court of Registration, 179 U. S., 405. Smiley vs. Kansas, 196 U. S., 447. Grenada Lumber Co. vs. Mississippi, 217 U. S., 433. Citizens National Bank vs. Kentucky, 217 U. S., 443.

All I need decide is whether the requirement of free transportation for members of the police force is within the power of the legislature.

I ought to sustain the legislation if I can consistently with the constitutional provisions. Attorney General vs. McGuinness, 49 Vroom, 346. Three considerations lead me to think that I can, notwithstanding the decision by the Appellate Division in New York.

1. It is not strictly accurate to say that the company receives no compensation for carrying police officers if they pay no fare.
20 It may well be that there is an indirect compensation in the protection afforded by the mere presence of the officer, against pickpockets, or even against assaults on passengers by the company's own servants for which the company would be liable. (Haver vs. Central Railroad Company, 33 Vr., 282), and in the help thus given to the company in the performance of its duty to its passengers. Indirect compensation of this character has been recognized as compensation within the meaning of the Constitution. Valentine vs. Englewood, 47 Vr., 509, 518, which cites with approval the remark of Justice Devens in Miller vs. Horton, 152 Mass., 540.

2. The statute of 1912 may fairly be regarded as an exercise of the police power of the state. Policemen are frequently required to be on street cars in the execution of their duties to preserve the peace, to enforce ordinances and to prevent or detect crime. It would be difficult to say that the mere presence of a police officer might not be of value for securing these objects, and it would be difficult if not impossible to distinguish in principle between his right, for example, to be on a crowded car to arrest pickpockets and his right to be on a car not crowded to enforce the ordinance against spitting. If he has the right to be there for these purposes it is impossible to say that his services may not at any time be required to prevent violations of law; at any rate, the legislature might reasonably think so, and legalize his presence on the car without payment of fare.

3. The constitutionality of legislation is not always to be tested by abstract reasoning. It depends in part at least upon the
21 habits and customs of the community. The Mill Acts, authorizing dams by which the land of other owners are flowed. (Head vs. Amoskeag Mfg. Co., 113 U. S., 9); the acts providing for drainage of swamp lands, at the expense in part of unwilling owners, (Wurtz vs. Hoagland, 114 U. S., 607); the taking of land for a levee in Louisiana (Eldridge vs. Trezevant, 160 U. S., 452); the irrigation of arid lands (Fallbrook Irrigation District vs. Bradley, 164 U. S., 112; Clark vs. Nash, 198 U. S., 361); the construction of an aerial bucket line across another man's land (Strickley vs. Highland Boy Mining Co., 200 U. S., 527) are all

instances of the extent to which the right of property may be modified by local customs or local needs, and justify the language of the United States Supreme Court in Otis Co. vs. Ludlow Co., 201 U. S., 140, at page 154, that "even the incidents of ownership may be cut down by the peculiar laws and usages of a State." It is shown in this case that at the time of the incorporation of the defendant company and for many years prior thereto, and subsequently until the Public Utilities Act of 1910 (P. L. 56) was supposed to make the practice illegal, it had been the custom of the street railway companies to carry members of the police force free. The defendant company acquired its rights while that custom was in vogue, and if the custom is now given the force of statutory law, the company loses nothing which it had either in possession or immediate anticipation at the time of its incorporation. In that respect, the case resembles Interstate Consolidated Street Railway Co. vs. Massachusetts, in which, however, the requirement of a half-
fare rested upon an antecedent statute. The underlying
22 principle however, is the same. It was upon this ground that the majority of the court decided that case. Upon it I may rest my view that the act of 1912 as far as it applies to police officers is valid. Further than that I need not go in this case. Assuming what was not questioned that they are public officers within the meaning of the act, the defendant had no right to eject the detective and the judgment must be affirmed.

23 *Judgment.*

(Entered November 13, 1912.)

New Jersey Supreme Court.

STATE OF NEW JERSEY, Defendant-in-Certiorari,
vs.
PATRICK SUTTON, Prosecutor.

Rule for Judgment.

The writ of certiorari in the above entitled matter having been argued before the Honorable Francis J. Swayze, one of the Justices of the New Jersey Supreme Court, pursuant to the statute in such case made and provided, by William D. Edwards, of counsel for Patrick Sutton, prosecutor, and Thomas G. Haight, of counsel for the State of New Jersey; and the Court having considered the reasons and evidence and arguments of counsel;

It is ordered that the conviction of the said Patrick Sutton by the First Criminal Court of the City of Jersey City and the judgment of the said Court in said matter be affirmed, with costs.

Entered November 13, 1912.

On motion of

THOMAS G. HAIGHT, *Attorney.*

24 *Assignment of Errors.*

(Filed April 7, 1913.)

New Jersey Court of Errors and Appeals.

In Error.

STATE OF NEW JERSEY, Defendant-in-Certiorari, Defendant-in-Error,
vs.
PATRICK SUTTON, Prosecutor, Plaintiff-in-Error.

Assignment of Error.

Now at this day, plaintiff-in-error assigns the following causes of error:

1. Because the Supreme Court decided upon the evidence taken on the trial in the Court below, and returned under the writ of certiorari, that the plaintiff-in-error at the time of committing the alleged assault and battery on James Coyle, was not rightfully engaged in ejecting the said Coyle from a street railway car of the Public Service Railway Company, a common carrier of passengers in Jersey City (whereof said prosecutor was an employee on said car) when said Coyle had refused to pay the fare fixed by law for his journey on said car, and that in so ejecting said Coyle, the prosecutor used more force than was necessary.

2. Because the Supreme Court decided that Chapter 159 of the Laws of the State of New Jersey for the year nineteen hundred and twelve (P. L. 1912, page 235) under which said Coyle claimed the right to ride free and without payment of fare upon said car
25 of the Public Service Railway Company is not unconstitutional nor contrary to the fourteenth amendment of the constitution of the United States, and that it does not deprive the said Public Service Railway Company of its property without due process of law.

3. Because the Supreme Court decided that Chapter 159 of the Laws of 1912, is not unconstitutional or void, and that it does not attempt to take the property of the Public Service Railway Company for public use without just compensation and in violation of the constitution of the State of New Jersey.

4. Because the Supreme Court decided that Chapter 159 of the Laws of 1912, is valid and a legitimate use of the police power of the State to provide for public safety.

5. Because the Supreme Court decided that the trial court on the trial below did not err in sustaining against the contention of the plaintiff-in-error, said Chapter 159 of the laws of 1912 as valid and constitutional and did not err in sustaining for that reason the right of said James Coyle to ride free upon said car without the payment of fare.

6. Because the Supreme Court decided that the trial judge did

not err on the trial below in sustaining against the contention of plaintiff-in-error said Chapter 159 of the laws of 1912, as valid and constitutional and did not err on deciding for that reason that the prosecutor was not justified in ejecting said James Coyle from said car, and that in so ejecting him the prosecutor was guilty of an assault and battery.

7. Because the Supreme Court decided that the said James Coyle, on whom the alleged assault and battery was committed, was
26 not a trespasser on said car, whom the prosecutor, Patrick Sutton, had a right to eject for refusal to pay fare, inasmuch as said James Coyle, from the evidence, was not at the time on police duty, and had no right to ride free even if said Chapter of the Laws of 1912 was held to be valid.

8. Because the Supreme Court decided that the conviction below was not contrary to the evidence produced on the trial nor contrary to law.

Dated, March —, 1913.

EDWARDS & SMITH,
Attorneys of Prosecutor, Plaintiff-in-Error.

27 STATE OF NEW JERSEY:

Court of Errors and Appeals, March Term, 1915.

Error to Supreme Court.

STATE OF NEW JERSEY
and
PATRICK SUTTON.

Appeal from — Court.

No. 2 of Nov. Term, 1914.
Date, June, 1915.
Chancellor presiding.
Opinion by Garrison, J.

Check List.

	Affirmed.	Reversal.	M.
The Chancellor	1	..	..
" Chief Justice	1	..	..
Mr. Justice Garrison	1	..	..
" " Trenchard	1	..	..
" " Parker	1	..	..
" " Bergen	1	..	..
" " Minturn	1	..	..
" " Kalisch	1	..	..
" " Black	1	..	..
Judge Vredenburgh	1	..	..
" White	1	..	..
" Terhune	1	..	..
" Williams	1	..	..
	—	—	—
Totals	—	..	..

Filed Jun- 14, 1915. Thomas Ffl Martin, Clerk.

28 New Jersey Court of Errors and Appeals, No. 2, November Term, 1914.

STATE OF NEW JERSEY, Defendant in Error,
v.
PATRICK SUTTON, Plaintiff in Error.

Argued November 17, 1914. Decided June 14, 1915.

1. The Act of May 26, 1912 (Pamphlet L., p. 235) insofar as it requires street railway companies to grant free transportation to police officers when in uniform or on duty is a constitutional exercise by the Legislature of its police power.

2. The object expressed by the language of the statute in question being one that the Legislature may lawfully accomplish under its police power, the statute will not be declared to be unconstitutional upon the ground that the purpose of the Legislature was to exact from the public utilities a money tribute in violation of constitutional principles, first, because the purpose of the Legislature is known to the courts only insofar as it appears in the object expressed by the language of its enactment and, second, because in dealing with the language of an enactment the courts adopt, if possible, that construction which will sustain the statute as a valid act of legislation.

On error to the Supreme Court, whose opinion is reported in 83 N. J. L., p. 46.

29 For the Plaintiff in Error, William D. Edwards, Frank Bergen.

For the Defendant in Error, John Bentley, John Milton, John W. Wescott, Attorney-General; Herbert Boggs, Assistant Attorney-General.

The opinion of the Court was delivered by

GARRISON, *J.*:

The Supreme Court held that the Act of May 26, 1912 (Pamphlet L., p. 235) by which street railway companies were required to grant free transportation to police officers when in uniform or on duty, was a constitutional exercise by the Legislature of its police power. In this view we concur.

That this statutory provision has a direct tendency to secure the presence of police officers upon street railway cars is attested by the very complaint of the plaintiff in error. That the presence of such officers upon such cars has a tendency to prevent disorderly conduct and to afford protection to passengers, if not an admitted fact is at least one of those determinations of fact that the Legislature has the right to make for itself when prescribing a police regulation.

Hopper v. Stack, 69 N. J. L., p. 562.

Lyons v. Morris, 86 N. J. L., p. 206.

How such a regulation shall be accomplished is also a purely legislative problem. The Legislature might require that a police officer should be carried upon every car, or upon every other car, or at certain times of day only. If the Legislature may lawfully do this, it may in lieu of such prescriptions secure the presence of the police upon the cars by the statutory provision now under
30 review. In any case the transportation of the officer is a subordinate incident to the police regulation, and of the power of the Legislature to enact such a regulation there would seem to be neither room for doubt nor ground for denial.

The argument against the constitutionality of this regulation is based fundamentally upon the contention that the considerations that have just been mentioned were not those that operated upon the mind of the Legislature, which, on the contrary, it is said, were of a purely monetary character, the real purpose of the legislation in question being to save expense to the public by throwing it upon the public utilities by the exaction from them of an unconstitutional tribute.

This argument fails to discriminate between the purposes of legislators and the objects of legislation, and hence gives no force to the established doctrine that courts deal only with the latter, i. e., with the objects of legislation as expressed in the statutory language, and are not concerned with and indeed cannot take judicial notice of the purposes of the law-maker saving as they are so expressed. This practical distinction is pointed out in the opinion of the Supreme Court in Sawter v. Schoenthal (81 N. J. L., p. 197) which upon this point has survived destructive criticism.

Another canon of constitutional law is that the language of the Legislature will, if possible, be so construed as to uphold rather than to destroy a statute it has enacted. We have seen that the result of the statute in question is to induce the presence of the police upon street railway cars, and that the police protection thus secured is within the object expressed in the language of the statute; if now it be conceded that it is also permissible to find in such language that the purpose of the Legislature in the enactment of this statute was to exact a tribute from the carrying companies in violation of
31 constitutional provisions, then by force of both of the judicial canons referred to we must give to the statutory language that construction which will result in sustaining it as a valid act of legislation. This places the judicial construction of the statute now before us upon its practical and legal footing. The underlying principle however, goes further, for so negligible is the purpose that was in the mind of the Legislature and so dominant is the object that is expressed in the legislation that if such object so expressed be one that the Legislature may lawfully accomplish in the manner prescribed, the enactment would not be declared to be unconstitutional even if the adjudicating tribunal knew (what it could not judicially know) that the purpose of the Legislature in enacting the statute was one that ran counter to constitutional restrictions; which is only another way of saying that in the judicial forum a statute stands or falls by the object that is expressed by its language. Moreover, while police

regulation of public utilities is clearly within the object expressed by the title, "An act concerning public utilities," the same can hardly be said if the statute be regarded as a taxing act or revenue-raising measure.

Affirming as we do the judgment of the Court below insofar as it applies to police officers and upon the single ground of the police power, we think it proper to add that in our opinion such judgment is not sustainable upon either of the other grounds relied upon below, viz., that of indirect compensation to the plaintiff in error, or that of a custom to which it had assented.

The judgment of the Supreme Court is affirmed.

Endorsed: "Filed Jun- 14, 1915. Thomas F. Martin, Clerk."

32 New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY, Defendant in Certiorari, Defendant in Error,
vs.
PATRICK SUTTON, Prosecutor, Plaintiff in Error.

On Certiorari.

Rule of Affirmance.

This cause having been argued at the November term nineteen hundred and fourteen of this court, by Frank Bergen and William D. Edwards for the Plaintiff in error, and John Bentley, John Milton, John W. Wescott, attorney general, and Herbert Boggs, assistant attorney general, for the defendant in error, and the court having inspected the record and judgment below, and the assignments of error filed herein, and having considered the same, and being of the opinion that the judgment of the supreme court should in all things be affirmed,

It is, thereupon, on this first day of July, nineteen hundred and fifteen, on motion of Herbert Boggs, assistant attorney general, ordered that the judgment of the supreme court entered in this cause and brought up by the writ of error herein, be and the same is in all things affirmed, with costs, and the record and proceedings be remitted to the said supreme court to be proceeded with in accordance with this judgment and the practice of this court.

On motion of

HERBERT BOGGS,
Assistant Attorney General.

Filed Jul- 1, 1915. Thomas F. Martin, Clerk.

33 [Endorsed:] 2593. New Jersey Court of Errors and Appeals. State of New Jersey, Defendant in Certiorari, Defendant in Error, vs. Patrick Sutton, Prosecutor, Plaintiff in Error. On Certiorari. Rule of Affirmance.

34 New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY, Defendant in Certiorari, Defendant in Error,
vs.
PATRICK SUTTON, Prosecutor, Plaintiff in Error.

On Certiorari.

Petition for a Writ of Error to United States Supreme Court.

To the Honorable Edwin Robert Walker, Chancellor and Presiding Judge of the Court of Errors and Appeals of the State of New Jersey:

The petition of Patrick Sutton, prosecutor and plaintiff in error in the above entitled cause, respectfully represents that he is a citizen of the United States and of the state of New Jersey; that at the present June term of this court final judgment was rendered in the above stated cause wherein your petitioner, Patrick Sutton, was prosecutor and plaintiff in error, and the State of New Jersey was defendant in certiorari and defendant in error in the New Jersey court of errors and appeals, which court is the court of last resort in all cases and the highest court of law and equity in the state of New Jersey in which a decision could be had.

That said action was upon a writ of certiorari issued by the supreme court of New Jersey to the judge of the First Criminal Court of Jersey City to review the legality of a certain order or judgment made and entered by the said First Criminal Court of Jersey City on the twenty-third day of April, nineteen hundred and twelve,
35 concerning a certain accusation in writing against your petitioner, on the complaint of one James Coyle, Lieutenant of Police of said city of Jersey City, for assault and battery, in which said action your petitioner was convicted and fined; and that upon the hearing in said suit the supreme court of New Jersey affirmed the said order of conviction of the said First Criminal Court of Jersey City, whereupon your petitioner took a writ of error from said judgment of said supreme court to the court of errors and appeals, and the matter coming on to be heard before that court the judgment of the said supreme court was in all things affirmed.

And your petitioner further shows that he is a conductor of a street railway car of Public Service Railway Company, and employed by that company, and is required by said company in his said service to collect a lawful fare from each person who rides upon said car; that your petitioner made such requirement of one James Coyle, who was riding upon the car of which your petitioner was conductor, and when said Coyle refused to pay such fare your petitioner, as he was required to do, ejected said Coyle from said car, using no more force than was required so to do, for which ejection he was convicted as for an assault and battery in the case under review in and by the said judgment of the said First Criminal Court of Jersey City which sustained as valid and constitutional

chapter 159 of the laws of New Jersey of nineteen hundred and twelve and sustained for that reason the right of the said James Coyle to ride free on the car of Public Service Railway Company, deprived Public Service Railway Company of its property without due process of law, denied it the protection of the laws, failed to give it
36 the equal protection of the laws and took its property for public use without just compensation.

That your petitioner urged in said supreme court and in said court of errors and appeals that all of said matters and things were secured to your petitioner under and by virtue of section 1 of the fourteenth amendment of the constitution of the United States; and that the judgment of said supreme court and the said judgment of the court of errors and appeals was and is in violation of the constitution of the United States, and particularly of the aforesaid provision thereof.

The said New Jersey court of errors and appeals, being the highest court in which such judgment could be rendered in the state of New Jersey, and having decided that the said order or judgment of said First Criminal Court of Jersey City made and entered on the said twenty-third day of April, nineteen hundred and twelve, was valid and effectual in law, and having decided that your petitioner was not entitled to the right claimed in and by virtue of the provision of the constitution of the United States hereinbefore referred to, your petitioner alleges that he is aggrieved in that in the proceedings aforesaid said courts have denied to him the right to which he is entitled as a citizen of the United States, all of which will more fully and particularly appear in detail in the record presented herein.

Your petitioner therefore prays that a writ of error may issue from the supreme court of the United States, directed to the New Jersey court of errors and appeals, removing the judgments and proceedings aforesaid that there may be done what according
37 to the constitution of the United States and the laws of the land ought to be done, and that your petitioner may have such other relief as may be proper.

And your petitioner will ever pray, &c.

FRANK BERGEN,
Attorney for and of Counsel with Prosecutor and Plaintiff in Error.

38 [Endorsed:] 2592. New Jersey Court of Errors and Appeals. State of New Jersey, Defendant-in-Certiorari, Defendant-in-Error, vs. Patrick Sutton, Prosecutor, Plaintiff-in-Error. On Writ of Error. Petition. Frank Bergen, Attorney for Prosecutor and Plaintiff-in-Error, 755 Broad St., Newark, New Jersey. Filed Jul- 2, 1915. Thomas F. Martin, Clerk.

39 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Court of Errors and Appeals of the State of New Jersey, Greeting:

[Seal District Court of the United States, District of New Jersey.]

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court of errors and appeals of the state of New Jersey before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between the State of New Jersey, defendant in certiorari and defendant in error, and Patrick Sutton, prosecutor and plaintiff in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption especially set up or claimed under such clause of the said constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Patrick Sutton, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you,
40 if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the first day of July, in the year of our Lord one thousand nine hundred and fifteen.

GEORGE T. CRANMER,
Clerk of the District Court of the United States for the District of New Jersey,
By CHARLES S. CHEVRIER,
Deputy.

Approved by

E. R. WALKER,
Chancellor, Presiding Judge of the Court of Errors and Appeals of New Jersey.

41 [Endorsed:] 2592. Supreme Court of the United States. Patrick Sutton, Plaintiff in Error, vs. State of New Jersey, Defendant in Error. On Writ of Error. Writ of Error to the New Jersey Court of Errors and Appeals. Frank Bergen, Attorney for plaintiff in Error, 755 Broad Street, Newark, New Jersey. Filed Jul- 2, 1915. Thomas F. Martin, Clerk.

42 Know all men by these presents, that we Patrick Sutton of the City of Jersey City, New Jersey, as principal, and Fidelity and Deposit Company of Maryland a corporation of the state of Maryland, as surety, obligors, are held and firmly bound unto the State of New Jersey, as obligee, in the full and just sum of five hundred dollars, lawful money of the United States of America, to be paid to the said obligee, or its certain attorney or assigns, to which payment, well and truly to be made, the said obligors bind themselves and their successors jointly and severally, firmly by these presents.

Sealed with their seals and dated this first day of July in the year of our Lord one thousand nine hundred and fifteen.

Whereas, lately at a session of the New Jersey Court of Errors and Appeals in a suit depending in said court between State of New Jersey, defendant in certiorari-defendant in error, and Patrick Sutton, prosecutor-plaintiff in error final judgment was rendered against the said Patrick Sutton, and he having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of New Jersey citing and admonishing it to be and appear at a supreme court of the United States at Washington within thirty days from the date thereof:

Now, therefore, the condition of the above obligation is such that if the said Patrick Sutton shall prosecute said writ of error to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; otherwise to remain in full force and effect.

43 Sealed and delivered in presence of,
L. D. H. GILMOUR.

PATRICK SUTTON. [L. S.]
FIDELITY AND DEPOSIT CO. OF MD.,
[COR. SEAL.] By NEWTON P. KINSEY,
Attorney-in-fact.
GEORGE W. LAMOREUX,
Agent.

Approved by
E. R. WALKER,
Chancellor, Presiding Judge of the Court of Errors and Appeals of the State of New Jersey.

(Revenue Stamp.)

44 STATE OF NEW JERSEY,
County of Essex, ss:

On this first day of July, Nineteen Hundred and Fifteen before me the subscriber, a Commissioner of Deeds of New Jersey, duly commissioned and sworn, personally came George W. Lamoreux by me duly sworn on his oath — says, that he is the agent of the Fidelity & Deposit Company of Maryland, a corporation of the State of Maryland, and that he resides in the city of Orange, New Jersey; that he knows Newton P. Kinsey attorney in fact of the Fidelity & Deposite Company of Maryland, and he knows *to* the corporate seal of the said Company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was affixed by the said attorney in fact, and the said instrument signed by the said attorney in fact as attorney in fact of the said Company attested by deponent as agent by order of said Company in deponent's presence as the voluntary act and deed of said Company; that the said company has duly complied with all the requirements of Chapter 134 of the Laws of the State of New Jersey of the Year nineteen hundred and two (1902); that the good, available assets of said Company exceed its liabilities, as such liabilities are ascertained in the manner provided in said Chapter; that the Fidelity & Deposit Company of Maryland, is duly incorporated under the Laws of the State of Maryland, and is authorized by the Laws of that State and under its Charter to become surety on bonds and obligations such as are mentioned in said Charter; and also has on deposit with the Superintendent of Insurance of the State of Maryland, good securities worth at least Two Hundred Thousand ($200,000) Dollars, held for security of its obligations and has fully paid up, safely invested and unimpaired capital of Two Million ($2,000,000) Dollars; and said Com-
44½ pany by a duly executed instrument, filed in the Department of Banking and Insurance of the State of New Jersey, has constituted the Commissioner of Banking and Insurance of the State of New Jersey, and his successor in office, its true and lawful Attorney, upon whom all original process in any action or legal proceeding against it may be served, and that the following is a true copy of the portion of the By Law of said Company authorizing the execution of Bonds on behalf of said Company:

"Article VI. Section 3. The President, or any of the Vice-Presidents, shall have power by and with the concurrence of the Secretary or any of the Assistant Secretaries, to appoint any attorney-in-fact or to authorize any person or persons to execute on behalf of the Company, any bonds recognizances, stipulations, undertakings, deeds, releases of mortgages, contracts, and agreements and policies, and to affix the seal of the Company thereto."

GEORGE W. LAMOREUX.

Sworn and Subscribed before me this first day of July, nineteen hundred and Fifteen.

FREDERICK J. FISCHER,
Commissioner of Deeds, New Jersey.

45

Fidelity and Deposit Company of Maryland.

General Offices, Baltimore.

(Incorporated February, 1890.)

Financial Statement, December 31st, 1914.

Assets.

Home Office Building, Charles & Lexington Sts.		$2,375,000.00
Other Real Estate, 214 N. Charles St., etc.		185,137.41
Bonds and Stocks		6,008,060.50
First Mortgage Loans, etc.		229,204.93
Unpaid Premiums, (subsequent to Oct. 1, 1914)		1,331,494.76
Unpaid Premiums, (prior to Oct. 1, 1914)		781,588.55
Bank Deposits for use of Branch Offices		76,840.00
Cash in Banks and Trust Companies		1,257,938.58
Total Assets		12,245,264.73
(Assets deducted according to ruling and regulations of various Insurance Departments, etc.)		
Unpaid Premiums, (prior to Oct. 1, 1914)	$781,588.55	
Net Amount of Special Deposits made under laws of various States, etc.	479,871.98	
		1,261,460.53
Total Assets (on basis of statement to insurance Departments, etc.)		10,983,804.20

Liabilities.

Reserve for Unearned Premiums		$3,388,360.08
Reserve for Claims, Admitted & Unadmitted		2,018,793.72
Reserve for Advance Premiums and Return Premiums		463,067.40
Reserve for Commissions (unpaid Premiums subsequent to Oct. 1, 1914)		199,109.30
Reserve for Premium Taxes, and Expense in Transit		130,000.00
Reserves, Special and Contingent		138,841.80
Reserve for Unpaid Reinsurance Premiums		41,978.03
Capital Stock	$3,000,000.00	
Surplus and Undivided Profits	$2,865,114.40	
Less amount deducted, according to Insurance Department regulations (see above).	1,261,460.53	
Surplus and Undivided Profits (on basis of statement to Insurance Departments, etc.)	1,603,653.87	
		4,603,653.87
		10,983,804.20

46 STATE OF MARYLAND,
City of Baltimore, sct:

I, Roland Benjamin, Treasurer of the Fidelity and Deposit Company of Maryland, do hereby certify that the above is a true statement of the Assets and Liabilities of said Company, as of December 31st, 1914, taken from the books and records of said Company.

ROLAND BENJAMIN,
Ass't Treasurer.

STATE OF MARYLAND,
City of Baltimore, sct:

Subscribed and sworn to, before me, a Notary Public of the State of Maryland, in the City of Baltimore, this 14th day of June, A. D. 1915.

[SEAL.] WM. A. BULLOCK,
Notary Public.

Endorsed: "Filed July 2, 1915. Thomas F. Martin, Clerk."

47 New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY, Defendant in Certiorari, Defendant in Error,
vs.
PATRICK SUTTON, Prosecutor, Plaintiff in Error.

On Writ of Error.

Assignments of Error.

Now comes the said Patrick Sutton, prosecutor and plaintiff in error herein, and respectfully submits and shows to the court that in the record, proceedings, decision and final judgment of the court of errors and appeals of the state of New Jersey in the above entitled cause manifest error has intervened to the great injury and damage of the prosecutor and plaintiff in error, as follows, to wit:

First. The said court erred in affirming the judgment of the supreme court of the state of New Jersey, which had affirmed the judgment of the First Criminal Court of the city of Jersey City rendered on the twenty-third day of April, nineteen hundred and twelve, because the said supreme court decided upon the evidence taken on the trial in the court below, the said First Criminal Court of the city of Jersey City, and returned under the writ of certiorari issued out of the supreme court and brought up to the said supreme court in this case, that the prosecutor and plaintiff in error at the time of committing the alleged assault and battery on one James Coyle, was not rightfully engaged in ejecting the said Coyle from a street railway car of the Public Service Railway Company, a
48 common carrier of passengers in Jersey City, whereof said prosecutor and plaintiff in error was an employe on said car,

when said Coyle had refused to pay the fare fixed by law for his journey on said car, and which fare prosecutor and plaintiff in error was required by his employer to collect or to eject said Coyle from the car; which prosecutor and plaintiff in error did, using no unnecessary force; and for so doing he was convicted by the judgment under review.

Second. The said court of errors and appeals of the state of New Jersey erred in not reversing the said judgment of the said supreme court of the state of New Jersey because the said supreme court decided that chapter 159 of the laws of the state of New Jersey for the year nineteen hundred and twelve (pamphlet laws 1912, page 235) under which said Coyle claimed the right to ride free and without payment of fare upon said car of Public Service Railway Company is not unconstitutional nor contrary to the fourteenth amendment of the constitution of the United States, and that it does not deprive the said Public Service Railway Company, and its employe the prosecutor and plaintiff in error, of property without due process of law, or for one or more of the causes and reasons and assignments of error filed by the prosecutor and plaintiff in error, and in not sustaining the allegations of error so filed.

Third. The said court of errors and appeals erred in not reversing the said judgment of the said supreme court because the said supreme court decided that chapter 159 of the laws of New Jersey of nineteen hundred and twelve is valid and a legitimate use of the police power of the state to provide for public safety.

49 Fourth. The said court in errors and appeals erred in not reversing the said judgment of the said supreme court because the said supreme court decided that the trial court below did not err in sustaining against the contention of the plaintiff in error said chapter 159 of the laws of New Jersey of nineteen hundred and twelve as valid and constitutional, and did not err in sustaining for that reason the right of the said James Coyle to ride free upon said car without the payment of fare.

Fifth. The said court of errors and appeals erred in not reversing the said judgment of the said supreme court because the said supreme court decided that the trial judge did not err on the trial below in sustaining against the contention of plaintiff in error said chapter 159 of the laws of New Jersey of nineteen hundred and twelve as valid and constitutional, and did not err in deciding for that reason that the prosecutor and plaintiff in error was not justified in the discharge of the duty required of him by Public Service Railway Company in ejecting said James Coyle from said car; and that in so ejecting him the prosecutor and plaintiff in error was guilty of an assault and battery.

Sixth. The said court of errors and appeals of New Jersey erred in not holding that the action of the said supreme court, which affirmed the said judgment of the said First Criminal Court of the city of Jersey City, did not under said chapter 159 of the laws of New Jersey of nineteen hundred and twelve unlawfully deprive the

prosecutor and plaintiff in error and his employer, Public Service Railway Company, of property without due process of law.

Seventh. The said court of errors and appeals of New Jersey erred in not holding that the action of the said supreme court,
50 which affirmed the judgment of the said First Criminal Court of the city of Jersey City, did not under said chapter 159 of the laws of New Jersey of nineteen hundred and twelve deny to the prosecutor and plaintiff in error the equal protection of the laws.

Eighth. The said court of errors and appeals of New Jersey erred in not holding that the action of the said supreme court, which affirmed the said judgment of the said First Criminal Court of the city of Jersey City, did not under said chapter 159 of the laws of New Jersey of nineteen hundred and twelve deny to the prosecutor and plaintiff in error the equal benefit of the laws.

Ninth. The said court of errors and appeals of New Jersey erred in not holding that the action of the said supreme court, which affirmed the judgment of the said First Criminal Court of the city of Jersey City, did not under said chapter 159 of the laws of New Jersey of nineteen hundred and twelve have the effect of taking the property of Public Service Railway Company and its employe, the prosecutor and plaintiff in error, for public use without just compensation.

Tenth. The said judgment of the said First Criminal Court of the city of Jersey City, the said judgment of the said supreme court of New Jersey, and the said judgment of the said court of errors and appeals of New Jersey enabled the state of New Jersey under said chapter 159 of the laws of New Jersey of nineteen hundred and twelve to deprive, and do deprive, the prosecutor and plaintiff in error and his employer Public Service Railway Company of property without due process of law, and in violation of section 1 of the fourteenth amendment of the constitution of the United States.

51 Eleventh. The said judgment of the said First Criminal Court of the city of Jersey City, the said judgment of the said supreme court of New Jersey, and the said judgment of the said court of errors and appeals of New Jersey, under said chapter 159 of the laws of New Jersey of nineteen hundred and twelve, have the effect of taking, and do in fact take, the property of the prosecutor and plaintiff in error and his employer Public Service Railway Company for public use without just compensation, and in violation of section 1 of the fourteenth amendment of the constitution of the United States.

Twelfth. The said judgment of the said First Criminal Court of the city of Jersey City, the said judgment of the said supreme court of New Jersey, and the said judgment of the said court of errors and appeals of New Jersey, under said chapter 159 of the laws of New Jersey of nineteen hundred and twelve, deny to the prosecutor and plaintiff in error, who is a citizen of the state of New Jersey and within its jurisdiction, the equal protection of the laws of the state of New Jersey, in violation of section 1 of the fourteenth amendment of the constitution of the United States.

And the said prosecutor and plaintiff in error prays that the judgments aforesaid may be reversed, annulled and for nothing holden.

FRANK BERGEN,
Attorney for and of Counsel with Prosecutor, and Plaintiff in Error.

52 [Endorsement:] 2592. New Jersey Court of Errors and Appeals. State of New Jersey, Defendant-in-Certiorari, Defendant-in-Error, vs. Patrick Sutton, Prosecutor Plaintiff-in-Error. On Writ of Error. Assignments of Error. Frank Bergen, attorney for Prosecutor, and Plaintiff-in-Error, 755 Broad St., Newark, New Jersey.

53 UNITED STATES OF AMERICA, *ss:*

To the State of New Jersey, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Court of Errors and Appeals of the State of New Jersey, wherein Patrick Sutton is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edwin Robert Walker, our Chancellor and Presiding Judge of the Court of Errors and Appeals of the State of New Jersey, this first day of July, in the year of our Lord one thousand nine hundred and fifteen.

E. R. WALKER,
Chancellor, Presiding Judge of the Court of Errors and Appeals of the State of New Jersey.

54 [Endorsed:] 2592. Supreme Court of the United States. Patrick Sutton, Plaintiff in Error, vs. State of New Jersey, Defendant in Error. On Writ of Error. Citation. Frank Bergen, Attorney for Plaintiff in Error, 755 Broad Street, Newark, New Jersey.

55 Supreme Court of the United States.

PATRICK SUTTON, Plaintiff in Error,
vs.
STATE OF NEW JERSEY, Defendant in Error.

On Writ of Error.

Acknowledgment of Service.

Service is hereby acknowledged this second day of July A. D. nineteen hundred and fifteen, of a copy of this citation, writ of error and assignments of error in the above stated cause.

JOHN W. WESCOTT,
Attorney for Defendant in Error.

56 [Endorsed:] Supreme Court of the United States. Patrick Sutton, Plaintiff in Error, vs. State of New Jersey, Defendant in Error. On Writ of Error. Acknowledgment of Service. Frank Bergen, Attorney for Plaintiff in Error, 755 Broad Street Newark, New Jersey.

57 Court of Errors and Appeals of the State of New Jersey.

I, Thomas F. Martin, Clerk of the Court of Errors and Appeals of the State of New Jersey, Do Hereby Certify that there was lodged with me as such Clerk, in the case of Patrick Sutton, Plaintiff in Error, vs. State of New Jersey, Defendant in Error, on the Second day of July, A. D. Nineteen hundred and fifteen, the original Bond, of which a copy is herewith set forth; two copies of the Writ of Error, as herein set forth, one to file in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court, at my office in Trenton, New Jersey, this Eighth day of July, A. D. 1915.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN, *Clerk.*

58 Court of Errors and Appeals of the State of New Jersey.

PATRICK SUTTON, Plaintiff in Error,
vs.
STATE OF NEW JERSEY, Defendant in Error.

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled cause, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name and affix the seal of the Court of Errors and Appeals, in the City of Trenton, this Eighth day of July, A. D. 1915.

[Seal of the Secretary of the State of New Jersey.]

THOMAS F. MARTIN, *Clerk.*

Endorsed on cover. File No. 24,836. New Jersey Court of Errors and Appeals. Term No. 189. Patrick Sutton, plaintiff in error, vs. The State of New Jersey. Filed July 9th, 1915. File No. 24,836.